



## **STAFF REPORT**

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September 23, 2003

### **Proposed Amendments to Chapter 13, Belmont Municipal Code, Massage Establishments**

Mayor and City Council of the City of Belmont  
Belmont CA

Honorable Mayor and Council members:

#### **Summary**

Pursuant to City Council instruction, the staff is now in the process of proposing amendments to each chapter of the Belmont Municipal Code. The purpose of this comprehensive review is to update the code book by deletion of outdated material and insertion of language changes to reflect current City policy, practice and changes in the law since the adoption or last amendment to the code book.

In October 2002, staff prepared amendments to Chapter 13, Massage Establishments, for the City Council's review. At the October 22, 2002 meeting, the Council heard concerns expressed by The Council gave direction to staff to respond to these comments in revising the proposed amendment for further Council review.<sup>1</sup> The City Manager, City Attorney, Police Chief, Community Development Director and Finance Director have worked together since the October meeting to revise the proposed amendments. The proposed ordinance is, by this staff report, presented to the City Council for its discussion and direction.

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<sup>1</sup>After the meeting, a letter was directed to the City Council by The American Massage Therapy Association, Governmental Relations Office. This report addresses all oral and written comments received at and subsequent to the October 22, 2003 City Council meeting. See Attachment 2.

## **Background and Discussion**

The City's current massage ordinance was adopted in 1961. The last comprehensive amendment of the ordinance was undertaken in 1973, but a number of its provisions date from 1961. As a result, many of its provisions are outdated from a legal and public health perspective. A copy of the current ordinance, found at Chapter 13 of the Municipal Code, is attached. (See Attachment 1.)

As indicated above, representatives from the Police Chief, Finance Director, Community Development Department Director, City Manager, City Attorney and staff from these departments have worked together since October 2002 on the proposed amendments to Chapter 13. While these revisions are proposed as part of the routine update of the Municipal Code, they are, in the opinion of staff, important and necessary for the Council to act on at this time.

In the last several years, a number of Bay Area cities have enacted ordinances containing stringent operating controls for massage establishments. These controls were enacted to address public health issues and criminal activity that has, in some instances, been associated with some massage establishments. Belmont's current ordinance provides few, if any, of these operating control standards. As a result, the Police Department reports that Belmont is seen as a prime place for establishment of massage businesses.

Between 1992 and 2001, the City received a total of 21 applications to operate a massage business in Belmont. In 2002 alone, 18 applications were received. To date in 2003, 5 technician permits were issued. Two establishment and 4 technicians applications are pending. Prior to 2002, all massage establishments in Belmont were sole proprietorships with no employees. In 2002, Belmont, per its current ordinance, approved a permit for California Health Center. This business has 10 massage rooms. Eight technician permits have been approved and 4 added applications are pending.

These statistics are presented to inform the City Council regarding the rate of growth in permit applications and the changing character of these establishments in Belmont. Staff has no evidence to indicate that this trend will not continue if the ordinance remains as currently written. Staff is concerned about the effect this increase in activity will have on the City from a land use and law enforcement perspective.

Per the City's Zoning Ordinance, massage establishments are permitted, either as a matter of right or with a conditional use or home occupation permit, in all but the Agricultural or A Districts, Executive Administrative or E1 Districts and Exclusive Manufacturing (ME) Districts. If applications continue at the current rate, this type of business could become a significant presence within the City; particularly along the El Camino corridor and Old County Road. While the vast majority of massage establishments operate as legitimate businesses providing a valuable service to the public, there have been instances in which massage establishment operators or their clients have engaged in illegal activity (i.e., prostitution, drug use, etc.) requiring increased police responses. The goals to be achieved by this amendment are to obtain appropriate information from applicants to assess whether or not they propose to operate a

legitimate business and to set standards governing the operation of the business to protect the health and safety of patrons and the community once the business is operating. Staff believes that the proposed revisions to the ordinance meet these goals. It has been the experience of other communities that imposition of these changes will slow the proliferation of illegitimate businesses. Belmont's ordinance will, if amended, be similar to ordinances in a number of communities in the Bay Area.

### **Proposed Ordinance**

The following portion of this staff report provides a section by section review of the proposed ordinance. Sections have been extensively renumbered and reorganized, but the text has been substantively changed by the addition of new requirements or time frames only in those portions shown in bold print.

### **Article 1. General**

Article I reads as follows:

Sec. 13-1. Purpose.

**It is the purpose and intent of the city council that the operation of massage, bathing and other similar establishments and persons offering services therein, wherein the principal function is giving of massages and/or baths, as defined in this chapter, should be regulated in the interests of public health, safety and welfare by providing minimum building sanitation and health standards for such establishments, and by insuring that persons offering services therein possess the minimum qualifications necessary to operate such businesses and to perform such services.**

Sec. 13-2. Definitions.

For the purpose of this chapter, the following words and phrases shall have the meanings respectively ascribed to them by this section:

**A. "Health officer" means the health officer of the County of San Mateo or his or her authorized representative.**

**B. "Massage." The method of treating the superficial parts of the human body for remedial or hygienic purposes by rubbing, pressing, stroking, kneading, tapping, pounding, vibrating or stimulating with the hands or any instrument.**

**C. "Massage, bathing or other similar establishments" (hereinafter sometimes referred to as "Establishment" or "Establishments") means any establishment having a fixed place of business where massages, baths or health treatments, involving massage, baths, hot tubs and/or saunas as the principal function, are given, engaged in or carried on, or permitted to be given, engaged in or carried on in any manner described in Section 13-2(B).**

**D. "Masseur or masseuse" means any person who administers a massage, bath or health treatment involving massage or baths as a principal function to another person for any consideration whatsoever.**

**E. "Person" means any individual, partnership, firm, association, corporation, joint venture or combination of individuals.**

**F. "Recognized School" means and includes any school or institution of learning which has for its purpose the teaching of the theory, method, profession or work of massage therapists, which school requires a resident course of study of not less than **five hundred (500) hours to be** given before the student shall be furnished with a diploma or certificate of graduation from such school or institution of learning showing the successful completion of such course of study. Schools offering correspondence courses(s) not requiring actual attendance of class shall not be deemed recognized schools. Schools not approved by the State of California under the provisions of Section 9431 1(d) of the California Education Code or an equivalent out of state school shall not be deemed a recognized school. The City shall have the right to confirm the fact that the applicant has actually attended classes in a recognized school for the aforementioned minimum time periods.**

**Secs. 13-3–13-9. Reserved.**

### **Summary**

The Purpose statement, Section 13-1, has been revised to reflect the objectives of these code revisions. No objection to this language has been voiced.

Definition. Section 13-2(A), (C), (D) and (E) have been added and there were no

objections to these changes when the City Council last reviewed the ordinance. The American Massage Therapy Association objects to the gender based terminology of Section 13-2(D), Masseur/Masseuse and requests that the Ordinance instead use the term massage therapist or massage technician. If the City Council directs, that change may be made.

Section 13-2(F) increases the number of required educational hours to 500. This educational requirement is in line with the requirement imposed by the certification program of the National Certification Board for Therapeutic Massage and Bodywork which is accredited by the National Commission for Certifying Agencies (NCCA), the accrediting body of the National Organization for Competency Assurance. The National Certification Board for Therapeutic Massage and Bodywork (NCBTMB) is a nationally accredited credentialing body formed to set standards for people who practice therapeutic massage and bodywork. It does this through a nationally recognized certification program that evaluates and attests to the core skills, abilities, knowledge and attributes expected of entry-level practitioners of therapeutic massage and bodywork.<sup>2</sup> The American Massage Therapy Association objects to the 500 hour requirement, requesting instead that the educational requirement be set at 200 hours.

## **Article II, Section 13-10, Permits, and Section 13-11, Application for permit.**

Article II, Section 13-10 and 13-11 provides as follows:

### **Sec. 13-10. Permit required.**

It is unlawful for any Person to operate, engage in, conduct, carry on, or permit to be operated, engaged in, conducted or carried on (as the owner of the business or as the owner of the premises in which the business is located or in any other capacity) in or upon any premises within the city, the business of a massage, bathing or other similar establishment having massage or baths as a principal function, all as defined herein, unless a massage establishment permit and business license for such business has first been obtained from the city and remains in effect in accordance with the provisions of this chapter.

It is unlawful for any Person to act as a masseur or masseuse unless such Person has attained a masseur/masseuse

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<sup>2</sup>In addition to the minimum number of 500 hours of in-class supervised education and training in formal therapeutic massage and/or bodywork, the board also requires at least 50 hours of continuing education during a 4 year NCBTMB certification period and at least 200 hours of therapeutic massage and/or bodywork session during the 4 year certification period.

permit from the police department of the city and such permit remains in effect in accordance with the provisions of this chapter.

If the applicant is a corporation, the name of the corporation shall be set forth exactly as shown in its articles of incorporation together with the names and residence addresses of each of the officers, directors, and stockholders holding more than ten percent of the stock of the corporation. Each officer of the corporation or each partner in a partnership must submit an application and comply with Section 13-11. If one or more of the partners is a corporation, the provisions above pertaining to a corporate applicant apply.

Sec. 13-11. Application for permit.

Any Person, except as herein otherwise provided, desiring to operate a massage, bathing or similar establishment in the city shall apply for and must obtain a massage establishment permit. Any individual desiring to engage in the practice of massage in the city shall apply for a masseur/masseuse permit. A massage establishment permit or a masseur/masseuse permit may be obtained under this chapter by filing with the police department a sworn application in writing on a form to be furnished by the police department which shall give the following information:

- A. Name, residence and telephone number;
- B. The previous address of the applicant for the **ten years** immediately prior to the present address of the applicant;
- C. **Social Security number and driver's license number if any;**
- D. Birth certificate or other written proof acceptable to the police department that the applicant is at least eighteen years of age;
- E. Fingerprints (taken by the police department for criminal history investigation) and **two** passport photographs at least two inches by two inches showing the head and shoulders of the applicant in a clear and distinct manner, taken within the last sixty days prior to the date of the filing of the application;
- F. Applicant's height, weight, color of eyes and hair;

G. Business, occupation or employment of the applicant for the **ten years** immediately preceding the date of application;

H. The massage establishment permit and/or masseur/masseuse permit or similar business license and permit history of the applicant, individually or as a member of a corporation, business or partnership. Such history shall include whether such applicant, in operating massage establishments or providing massage services in this or another city or state, under license or permit, has had such license or permit revoked or suspended, or if such or similar proceedings are currently pending, the reasons therefor, and the business activity or occupation subsequent to such action of suspension or revocation;

I. If the applicant is a partnership, the application shall set forth the names and street addresses of each general and limited partner;

J. If one or more partners of the applicant are a corporation, the name of the corporation shall be set forth exactly as shown in its articles of incorporation or charter together with the state and date of incorporation and the full legal names and street addresses of each of its current officers and directors;

**K. If the application is for a masseur/masseuse permit, the name and address of the establishment where the applicant is to be employed and the name of the Person holding the massage establishment permit for same;**

L. Whether the applicant has ever been convicted of any crime, except misdemeanor traffic violations, and if so convicted, a statement must be made giving the place and court where such conviction occurred, the specific charge under which the conviction was obtained and the sentence imposed as a result of such conviction;

M. Whether any previous employer or Person while employed by or with the applicant has been convicted in a court of competent jurisdiction of an offense involving conduct which requires registration under California Penal Code subsection 290, or a violation of subsections 266(i), 311 through 311.7, 314, 315, 316, 318 or 647(a), (b), (d) or (h) of the Penal Code;

**N. Whether the applicant has previously applied to the city for a massage establishment permit, or masseur/masseuse permit, the date of the application and every name(s) under which the application was made;**

**O. A diploma or certificate of graduation from a Recognized School, provided, however, that an applicant for a massage establishment permit who will have no physical contact with customers or clients need not possess such diploma or certificate;**

**P. Such other identification and information necessary to learn relevant matters specified above as required to be set forth in the application;**

**Q. A certificate executed under penalty of perjury from a medical doctor stating that the applicant has, within thirty days immediately prior to the filing of the application, been physically examined and tested for tuberculosis and found to be free from any infectious, contagious or communicable disease;**

**R. A separate waiver and release signed by the applicant authorizing the city, its agents and employees to seek information and to conduct any requisite investigation into the truth of the statements made on the application and the qualifications and record of the applicant;**

**S. If the application is for a massage establishment permit, provide proof of malpractice insurance in the amount of not less than five hundred thousand dollars (\$500,000.00), or provide proof of membership in a professional massage association that provides automatic malpractice insurance as a benefit of membership in such organization, such as the American Massage Therapy Association. The applicant must maintain the malpractice insurance policy in the amount of \$500,000 or must maintain a current membership in a professional massage association that provides automatic malpractice insurance coverage at all times while the massage establishment permit is in effect; and**

**T. Evidence of current certification in cardiopulmonary resuscitation and first aid from the American Heart Association or the American Red Cross; and**

**U. If the application is for a massage establishment permit, provide the name and address of the owner and lessor of the real property upon or in which the business is to be conducted. In the event the applicant is not the legal owner of the property, the application must also be accompanied by a copy of the lease and a notarized acknowledgment from the owner of the property that a massage establishment will be located on his/her property.**

**V. A safety plan including, but not limited to, exterior lighting, parking lot security and emergency access to the establishment.**

### **Summary**

Pursuant to these sections of the proposed ordinance, permits will be required for any “person” who owns a massage business within the City.<sup>3</sup> Section 13-11 of the proposed ordinance contains the requirements for the permit application. The permit application information required by the proposed ordinance is more extensive than information required by the current ordinance. The new information required of an applicant includes at subsections 13-11(C), social security number, (K), name and address of masseur/masseuse's employer, (N), date/information on prior applications, (O), proof of graduation from a recognized school, (R), investigating waiver, (S), proof of insurance, (T), CPR certification, (U), landlord/tenant information and (V), safety plan.

At the City Council meeting in October, the public speaker objected to the requirement that applicants have first aid training (T). The American Massage Therapy Association also believes this requirement is unnecessary.

The American Massage Therapy Association also objects to 10 year requirements of Section 13-11(B) and (G), proposing instead that 5 years worth of addresses and business experience is adequate.

The American Massage Therapy Association also suggests that changes be made to 13-11(Q) regarding medical information. They propose adding the following: “free from any infectious, contagious or communicable disease capable of being transmitted through the work of therapeutic massage.” Staff has no objection to this proposed change.

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<sup>3</sup>Person means any individual, partnership, firm, association, corporation, joint venture or combination of individuals who propose to operate a massage business within the City. Section 13-10.

They also ask that the City Council consider adding: “Pursuant to Health and Safety Code Section 199.20, and unless otherwise required by state or federal law, nothing in this section shall require any testing or disclosure as to whether the applicant is infected with the human immunodeficiency virus (HIV).”

Health and Safety Code Section 199.20 was repealed in 1995. Its provisions are now found in Section 120975 which provides:

To protect the privacy of individuals who are the subject of blood testing for antibodies to the probably causative agent of acquired immune deficiency syndrome (AIDS) the following shall apply:

Except as provided in Section 1603 or 1603.3, as amended by Chapter 23 of the Statutes of 1985, no person shall be compelled in any state, county, city, or other local civil, criminal, administrative, legislative, or other proceedings to identify or provide identifying characteristics that would identify any individual who is the subject of a blood test to detect antibodies to the probably causative agent of AIDS.

Staff does not recommend this change. The language of 13-11(Q) is drafted so as to allow the medical doctor to determine what tests are required in order to execute the certificate stating that the applicant is free from infectious, contagious or communicable diseases.

The American Massage Therapy Association objects to the inclusion of only one named association providing insurance coverage in Section 13-11(S). The section names one organization as an example only. Insurance coverage from other groups would be allowed with the proposed wording. Staff does not recommend a change to this section.

The American Massage Therapy Association asks that the City delete the requirement in Section 13-11(V) (i.e. safety plan) unless it intends to educate applicants about this requirement. The Police Department specifically requested this provision and intends to educate applicants about this requirement which is important to both employees and customers of the establishment.

## **Article II, Sections 13-12–13-13, Permit Exemptions**

Article II, Sections 13-12–13-13 provide for exemptions to permits. There is only one proposed amendment to these sections which read as follows:

Sec. 13-12.    Massage establishment permit exemptions.

The massage establishment permit required by this chapter shall not apply to hospitals, nursing homes, sanitariums, or other healthcare facilities duly licensed by the State of California.

Sec. 13-13. Masseur/masseuse permit exemptions.

The masseur/masseuse permit required by this chapter shall not apply to:

- A. Physicians, surgeons, chiropractors, osteopaths, **acupuncturists** and physical therapists duly licensed to practice in the State of California;
- B. Nurses duly registered by the State of California;
- C. Cosmetologists or barbers who are engaged in the practice for which they are licensed by the State of California;
- D. Accredited high school/college coaches and trainers employed therein while acting within the scope of their employment; and
- E. Trainers of any amateur, semi-professional or professional athlete or athletic team.

**Article II, Sections 13-14–13-15, Fees and Licenses**

Article II, Sections 13-14–13-15 provide for payment of permit fees and licenses. The proposed language reads:

Sec. 13-14. Permit fee and investigation.

All applications for initial permits shall be accompanied by a non-refundable investigation fee, **established pursuant to the city's fee schedule**. Additional fees may be charged to cover costs of processing the applicant's fingerprints by the State of California. Within a period of **sixty (60) days** from the date of filing the application, the police department shall inspect the premises proposed to be used as a massage establishment, interview the applicant or any other person who may have relevant knowledge pertaining to the application and make any other investigation necessary to complete a written evaluation covering all of the criteria outlined in Section 13-16. Said sixty (60) days maybe extended for such period as may be necessary to obtain fingerprint records from the appropriate state agency and/or as necessary to obtain background information from any appropriate local agency.

Sec. 13-15. Business license.

At the time of the application for a massage establishment permit, applicant shall also apply for and furnish the information necessary to obtain a business license as required by Chapter 12, Article I of this code. No business license shall be issued until zoning clearance is obtained, the police department investigation is completed and the permit to operate is approved. The business license shall be issued upon payment of the business license fee as provided in Chapter 12, Article II of this code.

**Summary**

Sections 13-14 and 13-15 of the proposed ordinance require payment of fees necessary to cover the cost of processing the application. These sections also ensure that business licenses will not be issued until zoning clearance is obtained and the Police Department investigation of the permit application has been completed. The only change proposed in this section is a reference to establishment of application fees as part of the City's master fee schedule, which is reviewed by the City Council on a yearly basis. Inclusion of this provision would allow the City Council to review and adjust fees on a yearly basis if warranted. The current ordinance requires payment of a \$50 application fee. This fee was set in 1961 and does not represent the actual cost to the City of processing an application.

**Article II, Sections 13-16–13-17, Issuance or denial of permits.**

Article II, Sections 13-16 and 13-17 provide the objective standards to be utilized when processing permit applications and the procedure for appeal if a permit application is denied. They are proposed to read:

Sec. 13-16. Issuance or denial of permit.

Within **sixty (60) days** (or longer if such time period needs to be extended in order to obtain fingerprints records from the appropriate state agency) of completion of the written evaluation made pursuant to Section 13-14, the **police department shall issue such permit** if all required information has been furnished and the evaluation finds that:

- A. The character of the applicant is satisfactory;
- B. If the application is for a massage establishment permit, the establishment as proposed, if permitted, would comply with all applicable laws, including, but not limited to, the city's building, fire, health and zoning regulations;

C. The applicant has not been convicted in a court of competent jurisdiction of an offense involving conduct which requires registration under California Penal Code section 290, or violations of sections 266(i), 311 through 311.7, 314, 315, 316, 318, **318.5, 318.6** or 647(a), (b), (d), (h), **(i) or (k)** of the Penal Code;

D. The applicant has not been convicted of a crime involving the use of force or violence upon another;

E. The applicant has not previously had a massage establishment permit or similar establishment permit or masseur/masseuse permit revoked by the city or any other public agency;

F. The applicant has not been convicted of:

1. Any offense involving sexual misconduct with children; or

2. **California Penal Code Section 290, Penal Code Section 266(i), 311.7, 314, 315, 316, 318 or 647(a), (b), (d) or (h).**

G. The operation of the massage establishment at the proposed site would not violate the city's zoning, building, fire regulations, or other provisions of the Belmont Municipal and/or Zoning Code.

H. The applicant has not knowingly and with intent to deceive made any false, misleading or fraudulent oral or written statements in the permit application, or in the application for a business license with the city, or to any Person investigating such application.

I. The applicant does not have an infectious, contagious or communicable disease, and is not in violation of any federal, state or local health law or regulation.

**J. The applicant for a masseur/masseuse permit has satisfactorily passed all applicable competency examinations administered by Recognized Schools or applicable licensing agencies.**

**K. The applicant and all employees have a current cardiopulmonary resuscitation certificate and first aid card from the American Heart Association or the American Red Cross, provided, however, an applicant for a massage establishment permit who will have no physical contact with customers or clients does not need to possess such certificate and card.**

**L. The applicant has a diploma or certificate of graduation from a Recognized School, provided, however, that an applicant for a massage establishment permit who will have no physical contact with customers or clients does not need to possess such diploma or certificate.**

**M. The applicant has not had a prior application to the City for a massage establishment permit, or masseur/masseuse permit denied within the previous one (1) year prior to the date of the current application for a massage establishment or masseur/masseuse permit.**

The permit shall be denied if all of the above findings cannot be made or if all of the information required is not supplied to the city. If denied, the reasons therefor shall be endorsed upon the application. **The police department shall notify the applicant of the disapproval** by first class mail with a copy of the application upon which the reasons have been endorsed.

Sec. 13-17. Appeal.

In the event a permit has been denied, applicant shall have **ten (10) days** from the date of mailing the notice within which to appeal to the **city manager** by filing a written application for a hearing. The application shall be filed with the city clerk. Notice for a hearing shall be given as follows:

A. Upon receipt of the appeal, the city clerk shall set a date and a time for the hearing within thirty (30) days from the date of filing the appeal, and shall give written notice of such hearing to the applicant at his or her address set forth in the appeal by first class mail at least ten days prior thereto.

B. On the date set, the city manager shall hear the matter, and may continue it from time to time before reaching a

decision. If the city manager finds that the applicant has satisfactorily met all of the requirements of this chapter, he/she shall order the issuance of the permit and business license upon payment of all applicable fees. If the city manager finds that the requirements have not been met satisfactorily, he/she shall deny the permit and license.

C. All findings of the city manager shall be final and conclusive upon the applicant.

### **Summary**

Section 13-16 provides that the Police Department will within sixty days, if possible, evaluate the permit application and issue or deny the permit. Proposed revisions to this section are found at subsection (J), (K) and (M). Subsection (J) requires proof that applicants have passed all mandatory testing. Subsection (K) requires that an applicant/employee who has physical contact with clients must possess a current CPR certificate and first aid card from the American Heart Association.

The American Massage Therapy Association and the public speaker at the October 2002 meeting objected to the requirement for first aid training. Staff has left this requirement in the proposed ordinance, believing it to be a valid health and safety measure. If the City Council directs, this provision can be deleted.

Subsection (M) provides that if an applicant has been denied a permit within the previous year, that denial would establish grounds to deny the current application. Section 13-16 contains a detailed listing of the information which the Police Department will utilize in making this determination.

The American Massage Therapy Association objected to the inclusion of convictions for theft (13-16(F)(2)) as one of the factors to be evaluated in permit processing. That language has been revised to match the requirements of Section 13-11(M) to which they had no objection.

If the permit is denied, an applicant will have ten days to appeal to the City Manager. The public speaker at the October meeting suggested that an appeal period of 30 days would be more appropriate. Staff has not made this change because 10 days is the appeal period contained in the City ordinances for all other appeals and staff believes this is an adequate time frame to file an appeal. If denial of a permit is appealed, a hearing is required to be held within thirty days. The City Manager will, at the conclusion of the hearing, determine whether or not the applicant has satisfactorily met the requirements of the City's massage ordinance and shall, if he or she finds that the applicant has successfully met the requirements, order the issuance of the permit upon payment of all applicable fees.

## **Article II, Sections 13-20–13-26, Operating Requirements.**

Article II, Sections 13-20–13-26 contain operating and sanitation requirements. Section 13-20 is proposed to read:

Sec. 13-20. **Operating** and sanitation requirements.

All massage, bathing or other similar establishments shall comply with the following operating and sanitation requirements:

**A. Advertising.** No such establishment granted a permit under the provisions of this chapter shall place, publish or distribute or cause to be placed, published or distributed, any advertising matter that describes or depicts any portion of the human body in a manner, or with the use of descriptive language, which would reasonably suggest to prospective patrons that any service is available other than those services described in Section 13-2(B) of this chapter.

**B. List of Services.** A list of services shall be posted in an open, public place on the premises, and shall be described in readily understood language. No owner, operator, responsible managing employee, manager or permittee shall permit, and no massage therapist shall offer to perform services other than those posted.

**C. Sanitation.** All establishments shall comply with the following minimum sanitation requirements:

**1. Employees, Masseurs and Masseuses.** All employees, masseurs and masseuses shall perform their work fully clothed, be clean and wear clean outer garments whose use is restricted to the establishment. Doors to dressing rooms and treatment rooms shall open inward, and may not be locked. Draw drapes, curtain enclosures, or accordion pleated closures are acceptable on all inner dressing and treatment rooms in lieu of doors. Separate dressing rooms and toilet facilities complying with the city building code shall be provided for each sex.

2. Linens. All establishments shall be provided with clean, laundered sheets and towels in sufficient quantity which shall be laundered after each use thereof and stored in closed, sanitary cabinets. Heavy white paper may be substituted for sheets provided that such paper is used only once for each Person and then discarded into a sanitary receptacle. Approved sanitary receptacles shall be provided for the storage of all soiled linens.

3. Facilities. **At least one entrance door, allowing access to the establishment and any building it may be in, shall remain unlocked during business hours.** All premises and facilities shall be maintained in a clean and sanitary condition, and shall be thoroughly cleaned each day of operation. The premises and facilities shall meet all code requirements of the city as to safety of the structure, adequacy of plumbing, heating, ventilation and waterproofing of rooms where showers, water or steam baths are given.

4. Patron Facilities. Patrons of the establishments shall be furnished with securable locker facilities, where the patron has the control of the key, and security deposit facilities for the protection of their valuables.

5. **Hours. Massage establishment operations shall be carried on or conducted, and the premises shall be open, only between the hours of 7:00 a.m. and 10:00 p.m.**

6. **Handicapped Areas. Each massage establishment must have handicap access and restrooms equipped for handicapped patrons.**

7. **Changing Rooms. Each establishment must have separate restrooms and changing rooms for male and female patrons.**

8. Lighting. Minimum lighting shall be at least one **sixty (60) watt** light in each enclosure where massage services are performed. **The light**

switch for the interior lights in each enclosure will be within the enclosure. There shall be no light in the enclosure that is operated from outside the enclosure. There shall be no sound device (i.e., buzzer or bell) that can be operated from outside the massage enclosure.

**9. Records.** Every massage establishment shall keep a written record of the date and hour of each treatment; the name and address of each patron; the name of the massage therapist administering the treatment; and the type of treatment administered recorded on a patron release form. Such written record shall be open to inspection upon demand only by officials charged with the enforcement of this chapter and for no other purpose. Such records will be kept on the premises of the massage establishment for a period of two years.

**10. No Residential Use.** No part of the establishment shall be used for residential or sleeping purposes. No cooking or food preparation will be allowed on the premises unless a full service kitchen is installed. Such kitchen will be for the sole use of employees, and will be installed in an employees only area. The full service kitchen will have a minimum of a sink with hot and cold running water, a refrigerator, a stove, and sufficient cabinets to store cooking utensils.

**D. Interior Doors.** The doors of all massage rooms, bathing rooms, or cubicles within such establishment must remain unlocked during any time the establishment is occupied.

**E. Physical Contact.** All employees, masseurs and masseuses shall not make intentional contact or occasional and repetitive contact with the genitals, anus, or areola (nipple) of another Person.

## **Summary**

Section 13-20 details the operational requirements for massage establishments. Its provisions place certain restrictions on advertising, require that a list of services be posted and detail the sanitation requirements for practitioners and supplies used within the facility. This section also requires that the businesses remain open only between the hours of 7:00 a.m. and 10:00 p.m.

The American Massage Therapy Association and the public speaker at the October 2002 meeting objected to several of the new and existing provisions of this section. The American Massage Therapy Association requested that the provisions of 13-20(C)(7), Sanitation, be interpreted to mean that changing facilities and bathrooms can be used by either sex. Staff has made a change to the language to address this concern by deletion of the word “separate.” Additionally, they prefer that the City require “professional attire appropriate to the practice of massage” instead of the language “All employees, masseurs and masseuses shall perform their work fully clothed, be clean and wear clean outer garments whose use is restricted to the establishment.” Staff recommends that the language remain as drafted because “professional attire appropriate to the practice of massage” is vague.

The public speaker and the American Massage Therapy Association questioned the need to store linens in a “closed” cabinet (existing requirement of Section 9(C)(2)), the requirement for “securable locker facilities” for patrons property (existing provision of Section 9(C)(4)), handicap access (new requirement of Section 9(C)(6)), 60 watt lighting (new requirement of Section 9(C)(8) and the prohibition of cooking or food preparation unless a full service kitchen is installed (new requirement of Section 9(C)(10)). At the October meeting, Council also expressed concern about the cost implications of the handicap access requirements imposed on small business operators. If directed by Council, this particular provision can be deleted, modified to “grandfather” existing facilities as non-conforming uses or imposed only when operators establish new businesses or upgrade their current facilities in a manner that requires issuance of a building permit. Staff believes the remainder of the existing and proposed changes in Section 9(C)(2), 9(C)(4), 9(C)(8) and 9(C)(10) are appropriate.

These changes are appropriate in order to insure that massage establishments are operating in a safe and sanitary manner. As this section demonstrates, there are currently few operational requirements imposed on massage establishments in the Belmont ordinance. It is for this reason that the Belmont Police Department believes the City has observed an increase in applications. The proposed changes to Section 13-20, subsections (A), advertising, (B), list of services, (C), sanitation, (D), entrance doors and (E), physical contact will bring Belmont's operating requirements inline with other cities, more adequately address health and safety concerns and give the staff adequate authority to insure that businesses are operated in a safe and healthy manner.

## **Article II, Section 13-21, Signs and Permits**

No amendments are proposed to Section 13-21 which provides:

Sec. 13-21. Display of signs and permits.

No Person granted a massage establishment permit pursuant to this chapter shall begin operations until a recognizable and legible sign has been posted at the main entrance to the establishment premises in compliance with the city's sign ordinance. All permits granted shall bear the picture of the permittee and shall be posted within the establishment in a location immediately available for inspection by representatives of the city. No Person granted a massage establishment permit pursuant to this chapter shall operate under any other name or at any other location than that specified in the permit.

## **Article II, Section 13-22, Changes**

Article II, Section 13-22, is proposed to be amended as follows:

Sec. 13-22. Notice of changes.

All Persons granted permits pursuant to this chapter shall report immediately to the **police department** and the **finance department** all changes of residence or business address or change of ownership of the establishment or service. **Failure to give such notice within fifteen (15) days of the event of change shall constitute grounds for revocation of the permit.**

## **Summary**

Any changes to the manner in which the business is operated must be immediately reported to the Police and Finance Department pursuant to Section 13-22. Failure to do so will result in grounds to revoke the permit.

## **Article II, Section 13-23, Inspections**

No amendments are proposed to Section 13-23 which provides:

Sec. 13-23. Inspection by officials.

The investigating officials of the city and the Health officer, shall have the right to enter the premises from time to time during regular business hours for the purpose of making reasonable inspections to observe and enforce compliance with the provisions

of this chapter and code, including all applicable building, fire, electrical, plumbing or health regulations.

#### **Article II, Section 13-24, Security.**

Article II, Section 13-24, is proposed to read as follows:

**Sec. 13-24. Security requirement.**

**Every applicant for a massage establishment permit shall post with the city clerk, security in the principal sum amount of five thousand dollars (\$5,000) either in cash or in the form of a surety bond executed by a good and sufficient corporate surety authorized to do a surety business in the State of California as the surety and by the applicant as principal. The form of the bond shall have been approved by the city attorney and shall provide that should the applicant be issued a permit under this chapter which is subsequently suspended or revoked within a period of two (2) years from the date that the massage establishment permit is issued, the city shall be reimbursed from said bond for all costs of any investigation or other proceedings related to said suspension or revocation.**

#### **Summary**

At the City Council meeting in October, the public speaker had objection to this requirement, indicating that it presented an onerous burden to small business operators. The American Massage Therapy Association also objects to this provision. The City Council expressed concern regarding this provision as well. Staff proposed this section in order to assure that the costs for services provided to massage establishments whose licenses are suspended or revoked would be recouped. The Finance Department has no objection to deletion of this provision. Staff will, with City Council direction, delete this section.

#### **Article II, Section 13-25, Outcall Services.**

Article II, Section 13-25, is proposed to read as follows:

**Sec. 13-25. Outcall services prohibited; exceptions.**

**No Person shall engage in massage services at any place other than an establishment with a proper business license and with the requisite permits issued pursuant to this chapter, unless all of the following requirements are met:**

**A. The patron possesses and presents each time the**

services are rendered a valid prescription or other writing from a licensed physician to the effect that the patron of such services cannot be treated at a licensed massage establishment;

B. The Person rendering the services possesses an unrevoked masseur/masseuse permit issued under the provisions of this chapter, for a minimum period of one year; and

C. The Person rendering the services obtains and maintains a record of every prescription or other writing for each incident in which services are rendered with each record showing the name and address of the doctor, the date, and any prescription number.

### Summary

Section 13-25 prohibits outcall services except when a patron has a valid prescription indicating that he or she cannot be treated at a licensed massage establishment, and the person rendering the services possesses a valid permit to do so and maintains records of the prescription demonstrating that the person could not be treated at a licensed massage facility.

The public speaker at the October 2002 meeting asked how this section would be enforced if violations occurred. It would be handled as are all other code enforcement cases (i.e., through civil complaints for injunctive relief, issuance of citations or by initiation of license suspension or revocation proceedings).

The American Massage Therapy Association objects to the requirement for a medical prescription (13-25(A)) for out-care services indicating that after massages are given for “health maintenance” not medical reasons and doctors may be reluctant to write prescriptions for these services. Staff recommends that the language remain as proposed. It requires a prescription or “other writing” from a licensed physician.

### Article II, Section 13-26, Sale, Transfer, etc.

Article II, Section 13-26, is proposed to be amended as follows to reflect the appropriate departments to which operators should direct their communication:

Sec. 13-26. Sale, transfer, relocation or **expansion** of establishment.

Upon sale, transfer or relocation of a massage, bathing or similar establishment, the permit and business license shall not be transferred without the written **approval of the chief of police** or

his/her designee and **the finance director or his/her designee**. An application for such change shall be accompanied by a nonrefundable investigation fee, **established pursuant to the city's fee schedule**, and provide all of the information required in Section 13-11.

If the business is to be expanded, the permittee shall, prior to expansion, make application to amend its permit by submission of application information required by Section 13-11.

### **Summary**

The speaker at the October 2002 meeting asked how this investigative fee, which is part of the City's current ordinance, is calculated and why it is not refundable. The fee will be set by the Council on a yearly basis in the master fee schedule in an amount needed to cover the actual cost of the Police Department's review of the material.

### **Article II, Section 13-27–13-28, Revocation, Suspension and Renewal of Permits.**

Article II, Section 13-27 and 13-28 are proposed to read as follows:

Sec. 13-27. Revocation or suspension of permit.

Any massage establishment permit or masseur/masseuse permit issued under this chapter shall be subject to suspension or revocation by the **chief of police** or his/her designee for violation of, or for causing or permitting violation of, any provision of this chapter or for any grounds that would warrant the denial of such permits in the first instance.

All Persons granted a massage establishment permit issued under this chapter shall also maintain a current business license, as required by Chapter 12, Article I of this Code. Failure to maintain a current business license shall be grounds for revocation of a massage establishment permit or masseur/masseuse permit issued under this chapter.

Prior to the suspension or revocation of any permit issued under this chapter, the permittee shall be entitled to a hearing before the chief of police or his/her designee, at which time evidence will be received for the purpose of determining whether or not such permit shall be suspended, modified, revoked or whether the permit may be retained. In the event the permit is

suspended or revoked, the notification of the reasons for such suspension or revocation shall be set forth in writing and sent to the permittee by means of first class mail.

In the event of suspension or revocation of any permit, the permittee may appeal to the city manager in the manner provided in Section 13-17.

Sec. 13-28.     Renewal of permit.

Every permit issued pursuant to this chapter shall be renewed annually, by means of an application submitted no less than **ninety (90) days** prior to the anniversary date of its issuance. Any permit not renewed shall be null and void on such anniversary date. **The non-refundable investigation fee for renewals shall be established pursuant to the city's fee schedule.** Additional fees may be charged to cover costs such as processing fingerprints. Prior to permit renewal being granted the permittee must:

A.     Provide **two** passport photographs at least two inches by two inches showing the head and shoulders of the applicant in a clear and distinct manner, taken within the last sixty (60) days immediately prior to the date of the filing of the renewal application and current information concerning any changes to the facts set forth in the application on file and previously approved by the City;

B.     Obtain a new certificate executed under penalty of perjury, dated within thirty (30) days of the renewal, from a medical doctor stating that the applicant for permit renewal is free from infectious, contagious or communicable diseases;

C.     Obtain clearance from the police department signifying that the permittee has had no arrests or convictions for violations of those penal code sections listed in Section 13-11(M) of this code since the permit was issued or last renewed.

D.     Any massage, bathing or other similar establishment, or individual, that has a permit issued prior to the effective date of this ordinance must apply for a new permit under this chapter when the previous permit expires. When renewing the permit, any such massage, bathing or other similar establishment or individual, must satisfy all the requirements of this chapter.

## **Summary**

Section 13-27 details the grounds for revocation or suspension of the permit and hearing rights prior to such action. Section 13-28 provides that each permit granted pursuant to this chapter must be renewed annually by means of an application submitted no less than ninety days prior to the anniversary date of issuance. If a permit is not renewed in a timely manner, it shall become null and void.

The American Massage Therapy Association objects to the 90 day requirement and instead proposes that applications for renewal be submitted 2 weeks before a license will expire. Staff believes 90 days is a more appropriate time frame because of the work required by the Police Department to review and verify the renewal information.

The speaker at the October 2002 meeting objected to the requirement, in the existing ordinance (Section 13-28(B)), of a doctor's certificate stating that the applicant for permit renewal is free from "infections, contagious or communicable diseases." This information is required with initial applications and, is from staff's perspective, necessary in order to evaluate whether applicants for renewal meet the requirements for issuance of a new permit.

### **Fiscal Impact**

The current ordinance requires an application fee of \$50, a renewal fee of \$50 and an investigative fee of \$15. While these fees may have covered actual costs of the permitting process in 1961, it does not do so today. The revised ordinance provides the City Council with a yearly opportunity to receive information about the permitting process and to set fees accordingly.

### **Recommendation**

Staff recommends that the City Council review these proposed amendments and direct staff on what, if any, changes are needed to this draft ordinance. The ordinance will be revised and finalized for introduction at a subsequent City Council meeting.

### **Alternatives**

1. Instruct that no changes be made to Chapter 13.
2. Provide alternate language to be included in Chapter 13.

### **Public Contact**

This matter was placed on the agenda and posted as required by the California Government Code.

### **Attachments**

1. Belmont Municipal Code Chapter 13
2. Letters from Susan Fleming and American Massage Therapy Association, Inc.

Respectfully submitted,

JEAN B. SAVAREE  
City Attorney